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HIGH COURT OF CHHATTISGARH, BILASPUR

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

M.A. No. 1228 of 2003

Oriental Insurance Company

Versus

Puni Ram Sahu & Others

And

M.A. No. 75 of 2004

Puni Ram & Others

Versus

Shri Narmada Motor Transport Cooperative Society, Pendra & Others

ORDER

Order for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Justice L.C. Bhadoo, J

I agree

Sd/-
L.C. BHADOO
Judge

Post for Order: 22.08.2007

Sd/-
Sunil Kumar Sinha
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 1228 of 2003

APPELLANT INSURER

Oriental Insurance Company through its Divisional Manager, Opposite High Court, Bilaspur.

Versus

RESPONDENTS

1. Puni Ram Sahu S/o Late Udai Ram Sahu, aged 50 years.
2. Smt. Kailasha Bai W/o Puni Ram Sahu, aged 47 years.
3. Ku. Girija Bai D/o Puni Ram Sahu, aged 19 years.
4. Ku. Shashikala Sahu D/o Puni Ram Sahu, aged 14 years.
5. Ku. Sarojini Bai D/o Puni Ram Sahu, aged 12 years.

(CLAIMANTS)

(Respondents No. 4 and 5 minor through their natural guardian mother Smt. Kailasha Bai W/o Puni Ram Sahu)

(All residents of Village Laripara, Chherka Bandha, P.S. Kota, Dist. Bilaspur)

6. Shri Narbada Motor Transport Cooperative Society, Pendra Road, through President of the Society, Tehsil Pendra Road, Dist. Bilaspur.

(OWNER)

7. Mobin aged 40 years R/o Village Semra, Tehsil Pendra Road, Dist. Bilaspur.

(DRIVER)

And

M.A. No. 75 of 2004

APPELLANTS CLAIMANTS

1. Puni Ram, S/o. Late Uderam, Aged about 54 years.
2. Smt. Kailasha Bai, aged about 51 years, W/o. Puniram.
3. Ku. Girija Bai, aged about 23 years, D/o. Puniram.
4. Ku. Shashikala Sahu aged about 18 years, D/o Puniram Sahu.

5. Ku. Sarojani Bai, aged 16 years, D/o. Puniram Sahu.

No. 5 Minor through natural guardian Smt. Kailasha Bai Sahu, W/o. Puniram Sahu

All R/o. Village Laripara, Chherkabandha, P.S. Kota, Tahsil and District Bilaspur (C.G.)

Versus

RESPONDENTS

OWNER 1. Shri Narmada Motor Transport Cooperative Society, Pendra, Through President, Tahsil Pendra Road and District Bilaspur (C.G.)

DRIVER 2. Mobin, aged 44 years, R/o. Village Semra, Tahsil Pendra Road, District Bilaspur (C.G.)

INSURER 3. The Oriental Insurance Company Ltd. Divisional Manager, Dayalband Bilaspur, District Bilaspur (C.G.)

(APPEALS UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988)

Appearance:

Shri Gautam Khetrapal, counsel for the Claimants in both the appeals.

Shri Abhishek Sinha, counsel for the Insurer in both the appeals.

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

ORDER
(22.08.2007)

Following Order of the Court was delivered by

Sunil Kumar Sinha, J,

(1) These two appeals arise out of a common award dated 30.09.2003 passed by the Fourth Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 12/99, whereby, the claimants were awarded a sum of Rs.2,37,000/- along with interest @ 9% per annum from the date of passing of the award.

(2) The Insurance Company has filed the appeal for setting aside the award, whereas, the claimants have filed the appeal for enhancement of the amount of compensation.

(3) The brief facts are that the claimants filed an application under Section 166 of the Motor Vehicles Act. 1988 praying compensation to the tune of Rs.10,70,000/- on account of death of Radheshyam, son of claimants No. 1 & 2 and the brother of claimants No. 3 to 5. The compensation was also sought for the death of two Buffaloes and damage caused to the Bullock Cart in the said accident. As per the pleadings in the claim petition, on 26.04.94, while the deceased-Radheshyam was coming from his village Laripara *via* Kota towards Bilaspur, near village Sakri at about 10.30 p.m., his bullock cart, which was loaded with wood, was hit from behind by the Bus No. MQL-47 owned by non-applicant No.1 and driven by non-applicant No.2. As a result of the said accident, the bullock cart was completely damaged and both the Buffaloes died on the spot. Radheshyam received many injuries, claimant No.1 also received injuries. They were taken to District Hospital, Bilaspur, where Radheshyam died on account of the said injuries and claimant No.1 was treated in the hospital. Though a case under Section 304-A IPC was registered against the driver by police station Chakarbhata but the police did not filed the charge-sheet against him and a final report was submitted.

(4) The owner filed its written statement denying the alleged accident. The driver remained exparte. The Insurance Company also filed its written statement after taking permission under Section 170 of the Motor Vehicles Act. It also denied the factum of accident saying that the accident did not occur from the Bus No. MQL-47. According to them, the said vehicle was not involved in the accident.

(5) Learned Claims Tribunal framed various issues in this case and after recording the evidence of the parties, allowed the claim as above. It is against this award, claimants as well as Insurance Company have filed these appeals.

(6) Learned counsel for the Insurance Company raised two points, he argued that it has not been established before the Tribunal that the said Bus No. MQL-47 was involved in the accident, therefore, the finding in this regard is perverse. Secondly, he argued that the multiplier of 20, used in this case, is too high, which ought not to have applied by the Tribunal looking to the age of the deceased and the claimants.

(7) Opposing these arguments, learned counsel for the claimants argued that the Claims Tribunal has rightly determined that the accident was caused by Bus No. MQL-47. Opposing the arguments regarding quantum, he argued that in fact, the income has not been properly assessed and the interest has also not been awarded from the date of accident, therefore, the amount of award be suitably enhanced.

(8) We have heard, learned counsel for the parties at length and have also perused the records of the Claims Tribunal.

(9) So far as identity of the offending vehicle is concerned, it has been deposed by Puniram (AW-1) that on fateful night, when he was taking his bullock cart by keeping himself in front of the cart, he saw a vehicle rashly come from the back side. At that time, his son Radheshyam (since deceased) was sitting on the bullock cart. Seeing this, he stopped the bullock cart on the extreme side of the road waiting passing of the vehicle. The vehicle came from behind and dashed with the cart, due to which, the bullock cart entangled with the Bus and was dragged to some distance. The wheels of the cart were thrown out, he received injuries. Radheshyam fell down on the ground and became unconscious. The offending vehicle ran over one of the Buffaloes whose body was crashed and it died on the spot. The second Buffalo also received injuries and bullock cart was completely damaged. He has most specifically deposed that the offending vehicle (bus) was belonging to Narbada Transport. He has deposed that the lights of a mill, which was situated at the place of occurrence, were on, therefore, he could identify the Bus. He has also deposed that Nanki @ Shiv Baggus and many other persons came to rescue them but the Bus fled away towards Bilaspur. He has proved the requisition for post-mortem (Ex.-P/1), in which it has been mentioned that the offending Bus was belonging to Narbada Transport.

(10) Shiv Baggus has been examined as A.W.-2. He is a driver by profession. He has supported the evidence of A.W.-1. He has stated that he was a passenger in the offending vehicle which belongs to Narbada Transport. This Bus had met with an accident as it dashed the bullock cart, which was dragged to a long distance by Bus. He has deposed that he was sitting on the front seat and he had witnessed the occurrence. Apart from version pertaining to manner of the accident, he has most specifically mentioned the number of the Bus as MQL-47. It is on this evidence, the Tribunal has recorded the finding against issue No.1 that the accident was caused due to rash and negligent driving of Bus No. MQL-47.

(11) We have gone through the entire evidence of these two witnesses and on appreciation, we do not find any infirmity in such finding recorded by the Tribunal. Therefore, first argument raised by learned counsel for the Insurance Company has no force and the same cannot be accepted.

(12) So far as quantum is concerned, admittedly, the deceased was aged about 18 years. In the said situation, the Tribunal has assessed his notional income to be Rs.15,000/- per year and after deducting Rs.5,000/-, dependency of Rs. 10,000/- has been determined and using multiplier of 20, it has assessed the compensation towards the loss of earning in sum of Rs. 2 lakhs. Apart from this, for mental agony and pains, a lump sum amount Rs.10,000/- has been awarded and

Rs.2,000/- has been awarded on account of funeral expenses. Besides the above, Puniram has been awarded Rs.5,000/- on account of treatment and injuries sustained by him. Rs.10,000/- in lump sum has been awarded on account of love and affection and Rs.6,000/- has been awarded for the death of two Buffaloes and Rs.4,000/- has been awarded for damage caused to the bullock cart. In this manner, a total sum of Rs.2,37,000/- has been awarded to the claimants and the interest has been awarded @ 9% per annum from the date of award.

(13) In the matter of ***Adikanda Sethi (Dead) Through LRs. and Another –Vs- Palani Swami Saran Transports and Another, (1997) 5 SCC 435***, the Apex Court quoted vide Para-4 that the principle of determination of the compensation in the case of fatal accidents was determined by the said Court in *U.P. SRTC v. Trilok Chandra, (1996) 4 SCC 362.* The Apex Court in para 18, after considering the tabulations, found that the maximum multiplier of purchaser was as under : (SCC p.371)

> "...What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as courts and tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34,

thereby showing lack of awareness of the background of the multiplier system in *Davies case {(1942) 1 All ER 657}.*

(14) On the basis of this judgment, it is clear that the multiplier cannot exceed more than 18 and apparently, a wrong multiplier has been used by the Tribunal. Looking to the age of the deceased as also the age of the parents and other dependants, we deem it proper to use the multiplier of 15 in this case and to reduce the amount of compensation of loss of earning.

(15) So far as question of grant of interest is concerned, the Tribunal has not recorded any finding as to why interest has not been granted from the date of application. We have perused the records of the Tribunal. It appears that in this matter, the Claim Petition was filed on 25.10.94 but it was dismissed in default on 21.8.97 and was again restored on 29.6.99 and thereafter, a final award was passed on 30.9.2003. Certainly, therefore, the claimants would not be entitled for interest of the period commencing from 21.8.97 to 29.6.99, which we round up as to 2 years. If this period is deducted from the entire period consumed for decision of the Claim Petition, it comes around 7 years. After perusal of the records, it does not appear that the claim was delayed on account of claimants, therefore, we are of the opinion that the claimants are entitled to the interest for the period of 7 years during the pendency of Claim

Petition and the Tribunal erred in law in not granting them interest for the said period and we deem it proper to award the interest @ 6% per annum for the period of 7 years, which has in fact been net consumed for determination of the proceedings of Claim Petition before the Tribunal.

(16) In the matter of ***State of Haryana and Another -Vs- Jasbir Kaur and Others, (2003) 7 SCC 484***, the Apex Court held that 'The Tribunal while awarding compensation has to determine the amount which is to be in the real sense "damages", which in turn appears to it to be "just and reasonable". Though compensation for loss of limbs or life cannot be weighed in golden scales but at the same time compensation is not expected to be a windfall for the victim. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just and which would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration and requires judicious approach. The expression "just" denotes equitability, fairness, reasonableness and non-arbitrariness.'

(17) Keeping in mind the above principles, we partly allow and dispose of these appeals and they are disposed of on following terms:

(i) The claimants shall be entitled to Rs. 1,50,000/- on account of loss of earning by using multiplier of 15 to the yearly dependency of Rs. 10,000/-. Apart from that they shall also be entitled to receive amounts on other heads as mentioned in Para-32 of the award and thus they shall be entitled to receive compensation of Rs. 1,87,000/- from the non-applicants.

(ii) This amount shall carry interest @ 6% per annum for 7 years (during the period of pendency of Claim Petition), which comes Rs. 78,540/-.

(iii) After this period i.e. after passing of award, the claimants would be entitled to get interest @ 6 % from the date of award till its realization on the principle amount of Rs. 1,87,000/-.

No order as to costs.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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